IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

MACA.No. 500 of 2003()

OPMV.1103/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT/PETITIONER

K.P.MUHAMMED SYED, S/O.K.V.KADER HAJI,
PROPRIETOR, TOPEE PLASTICS, O.V.ROAD,
TELLICHERRY.

BY ADV. SMT.A.C.VIDYA

RESPONDENTS: RESPONDENTS

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1. K.K.AHAMMEDKUTTY, MELADATH HOUSE,
P.O.PARAMBATHKAVU, MANIPURAM,
KODUVALLY, KOZHIKODE DIST.

2. P.ASOKAN,
MANIKUZHI, PARAYIL HOUSE,
P.O.MANIPURAM,
KOZHIKODE DIST.

3. NEW INDIA ASSURANCE COMPANY,
EAST NADAKAVU, KOZHIKODE.

BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 500 OF 2003

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Dated this the 29th day of May, 2007

J U D G M E N T

Petitioner in O.P.(MV) No.1103 of 1997 on the file of the Motor Accidents Claims Tribunal, Thalassery is the appellant. He filed the O.P. claiming damages caused to a shop building. It was averred that the appellant is the owner of a shop building by name Topco Plastics, O.V. Road, Thalassery. It was further averred that on 10.6.1997 a vehicle bearing Reg. No.KL-11/D-6919 driven by the supplemental second respondent in a rash or negligent manner hit against the building causing damages to the shop. It was also contended that the petitioner had to close down the business for 7 days and he sustained loss on account of the closure of the business also. It was further contended that he had to spent Rs.23,000/- for repairing the shop building. So he claimed Rs.30,000/- as compensation.

2. First respondent raised a contention disputing the negligence of the driver and also the quantum of damages

claimed. It was contended that the petitioner has to prove that he is the owner of the building. It was further contended that the shop building in question did not sustain damages as alleged in the petition. The driver of the vehicle adopted the contention of the owner and contended that the vehicle was covered by a valid policy of insurance. Insurer of the vehicle filed a written statement disputing its liability. It was contended that the owner did not inform the Insurer about the accident and no steps were taken for assessing or valuing the alleged damages.

3. The Tribunal dismissed the application holding that only the owner of the building can file an application for compensation. It was further held that in view of the denial of the right to get compensation the petitioner should have produced documents to prove his title to the building. It was also held that the petitioner did not adduce evidence as to whether he is the owner or tenant of the building. Challenging those findings in the award, this appeal is filed.

4. It is true that the petitioner did not adduce any evidence to substantiate his case. It is also not proved

whether he is the owner or tenant of the building. Learned counsel for the appellant submitted that if the tenant had actually incurred expenses for repairing the building there is no law which prevents him from claiming the amount he had spent. The Tribunal did not consider the matter in the right perspective. So I am of the view that an opportunity can be given to the appellant to amend the pleadings and adduce further evidence. For that purpose, the matter has to go back to the Tribunal.

In the result, the appeal is allowed. The award passed by the Tribunal is set aside and the matter is remanded to the Tribunal. The Motor Accidents Claims Tribunal, Thalassery is directed to take O.P(MV) No.1103 of 1997 back to file and dispose of the same afresh in accordance with law, after giving a reasonable opportunity to both sides to amend pleadings and adduce further evidence, if so advised.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

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29TH MAY, 2007